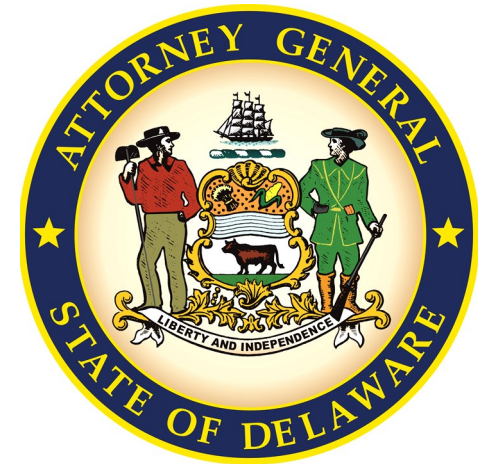


Delaware Department of Justice

Know Your Rights: Picketing & Handbilling

Delaware Department of Justice



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NOTE: This brochure is intended to be a quick reference guide. It is not legal advice, does not create an attorney-client relationship, and is not a substitute for legal advice based on any specific set of facts. This brochure provides a general overview of this subject matter. There are exceptions to the general rules referenced herein based on the specific facts and circumstances. For example, while it is generally true that picketers may dissuade employees and others from crossing a picket line and from going to work, the circumstances of the picketing may render such conduct unlawful. A consequence of that kind of action may result in the loss of certain protections under the NLRA or impose other limitations. Similarly, handbillers engaging in certain actions may lose their protected status as non-picketers. The application of laws that protect picketing and handbilling is highly fact dependent. For these reasons, anyone considering such action is urged to seek legal counsel.

The Delaware Department of Justice has a duty to protect the rights of all Delawareans, including strong protections of First Amendment rights. While the DOJ can not provide individual legal advice, the Department also recognizes the importance and public value of Delawareans understanding their rights under the law.

The First Amendment to the U.S. Constitution, and the National Labor Relations Act (NLRA) grant workers certain rights to demonstrate through picketing and handbilling. Inside this brochure you'll find information about those rights and contact information for the federal agency that investigates NLRA violations.

While this brochure is for informational purposes only and is not a substitute for specific legal advice — including restrictions that may be specific to certain locations, such as health care facilities — Attorney General Jennings believes strongly that our state is a stronger, more just place to live when all Delawareans are familiar with their rights. To that end, we hope you find this information helpful.



www.attorneygeneral.delaware.gov
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What is Picketing?

What is Picketing?

Picketing is a form of protest that is used to call attention to worker issues and grievances. Picketing is permitted by the National Labor Relations Act (NLRA) to “engage in concerted activities for the purpose of collective bargaining or other mutual aid or protections.”

The ability to picket is not absolute. It depends on the objectives, the time and place of the picketing, and the message conveyed.

There are many types of picketing. The two most common types of picketing are recognitional picketing and informational picketing.

Recognitional Picketing

Recognitional picketing is common tactic used to compel employers to recognize a union as the only bargaining agent for workers. Section 8(b)(7) of the NLRA allows recognitional picketing with four major limitations. It's not allowed:

- When the employer has already legally recognized a labor union and the representation is valid under the law
- Within the preceding 12 months, a valid union election was held
- Beyond 30 days unless a union petition is filed
- When it violates federal, state, or local laws

Pickers can truthfully advise the public about the union status of the employer's workplace, i.e., has no union contract. However, the picketers can't impede the ability of employees to enter the workplace or vendors to pick up, deliver or transport goods or perform services.

Informational Picketing

Informational picketing refers to carrying signs or handing out flyers or handbills that inform the public of things like the employer doesn't employ union members or doesn't have a union contract. If a workplace is unionized, informational picketing is used to inform the public about a matter of concern to the union.

The basic rules for informational picketing are:

- Information must be truthful and not deceptive
- Does not try to impede people or vendors from doing business with the employer, unless they are “allies” of the primary employer
- Does not try to dissuade employees from going to work

What is Handbilling?

- Cannot violate federal, state, or local laws
- May use banners and other inflatables, so long as consistent with the applicable law, codes, or regulations of the relevant unit of local government.
- Employees must be on their own time

What is Handbilling?

Conventional union handbilling is when unions distribute pieces of paper with a message on it, i.e., cards, flyers, leaflets, etc. It's not picketing in and of itself, but normally the distribution of paper documents with messages is used during informational picketing. Handbillers distribute their documents outside company property, like on a sidewalk.

Handbilling can be used during picketing or as a standalone tactic. Handbilling is the exercise of free speech, so it is protected by the First Amendment of the U.S. Constitution, but that doesn't convey unlimited employee or employer rights. The rules of picketing establish the rights of the union representatives, employees, and the employer.

What You Should Know About Handbilling:

- Handbilling is protected by the First Amendment so long as it's peaceful. If Handbills are distributed in a coercive, disruptive or violent manner they will lose First Amendment free speech rights.
- Handbill information must be truthful and not contain false statements presented as fact.
- Handbillers can't trespass on private property. They can only use publicly accessible walkways or areas open to the public.
- Handbillers can't block ingress and egress from an employer's property.

Employee & Employer Rights

Employer Rights

- Can enforce non-discriminatory rules barring non-employee organizers from distributing literature on company property if the union has other means of communicating its message to employees
- Can prohibit employees from using paid time to distribute handbills.
- A union cannot picket an employer to force it to stop doing business with another employer who is the primary target of a labor dispute.
- At worksites with more than one employer, such as a construction site, picketing is only permitted if the protest is clearly directed exclusively at the primary employer.

Employee Rights

- Can direct handbills to anyone.
- They can engage in picketing, except where doing so would be unlawful.
- Can distribute handbills on publicly accessible walkways or areas generally open to the public. A union representative cannot come onto private property to distribute handbills.
- Message can be very broad to avoid claims of untruthfulness

If you believe your rights or the rights of others have been violated, you should contact the National Labor Relations Board (“NLRB”) promptly to protect your rights. You may inquire about possible violations without your employer or anyone else being informed of the inquiry.

Charges may be filed by any person and need not be filed by the employee directly affected by the violation. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's website: www.nlr.gov.

You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.